

IN THE MATTER OF

AMERICA ONLINE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3787. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the Virginia-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available. In addition, the consent order requires the respondent to disclose the manner in which fees or charges are assessed or calculated and prohibits misrepresentations concerning the terms or conditions of any electronic fund transfer from a consumer account.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang and Steven Silverman.*

For the respondent: *Kevin Duke*, in-house counsel, Dulles, VA.

COMPLAINT

The Federal Trade Commission, having reason to believe that America Online, Inc. ("America Online" or "respondent") has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. America Online is a Delaware corporation with its principal office or place of business at 22000 AOL Way, Dulles, Virginia.
2. America Online has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, America Online provides consumers with a range of options including electronic mail,

interactive magazines and newspapers, transactional services, and access to the Internet.

3. America Online has been and is now engaged in the regular practice of making "electronic fund transfer[s]" from "consumer" "account[s]" as those terms are defined in the EFTA and its implementing Regulation E.

4. The acts and practices of America Online alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act.

AMERICA ONLINE'S COURSE OF BUSINESS

5. America Online has disseminated or has caused to be disseminated advertisements for its online service through various media including, but not limited to, print, television, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

OPEN HERE TO BEGIN YOUR FREE TRIAL

It Just Takes 3 Easy Steps . . . To explore America Online® for TEN Hours on us. So, go for it and we'll see you online soon!

* * *

You NEED America Online . . . To access the Internet with graphical ease . . . to download over 120,000 software files and get computing support . . . To investigate your special interests or discover new ones AND MUCH MORE! All For Ten Hours, FREE!

The advertisement contains a statement at the bottom of an inside panel, in fine print, that provides:

Use of America Online requires a major credit card or checking account. Users outside the United States pay an additional per-minute surcharge at all times, including trial time. . . . Additional phone charges may apply. Your free trial time must be used within 30 days of your initial sign-on. Limit one free trial per household.

Exhibit B

Open Here For Free Software.

Try America Online FREE For 10 Hours! Try the nation's most exciting online service -- FREE.

* * *

Just Use This Software To Try America Online Free. . . . Start using your 10 FREE hours today.

* * *

Special Trial Offer 10 FREE Hours To Explore America Online....

The advertisement contains a statement at the bottom of an inside panel, in fine print, that provides:

Communication surcharges may apply. See online registration information for details on your free trial offer. Use of America Online requires a major credit card or checking account. Limit one free trial per household. Your free trial time must be used within 30 days of your initial sign-on. Members outside the 48 contiguous United States may pay a surcharge at all times, including trial time. . . .

6. Consumers choosing to participate in the free trial offer do so by connecting to the America Online service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of registration screens including, but not limited to, the attached Exhibits C and D. The registration screens obtain identification and billing information from consumers, prompt consumers to select screen names and passwords for future access to the online service, and provide basic information about the online service, including the following details about the terms of the free trial offer:

Exhibit C

HERE'S HOW YOUR FREE TRIAL WORKS:

So you can explore America Online at no risk:

Your first TEN hours of connect time are free.

The monthly membership fee of \$9.95 has been waived for your first month.

Your free trial time must be used within 30 days of your first sign-on. You will not be charged unless you use more than your 10 free hours.

In addition, the registration screens display basic membership terms including the monthly charges incurred by America Online members:

Exhibit D

YOUR AMERICA ONLINE MEMBERSHIP

Your monthly membership fee of \$9.95 (charged at the end of your first month)

INCLUDES FIVE free hours of connect time EACH month.

After your five free hours, you may use additional time at the rate of \$2.95 per hour. . . .

7. Upon completion of the registration process, consumers are provided an opportunity to review America Online's Terms of Service Agreement and Rules of the Road. To do so, consumers must access the Members' Service area, available online. These documents, along with the Membership Conditions viewed during the registration process, are collectively referred to by America Online as the Terms

of Service and comprise the contract between America Online and its members.

8. While the hourly charge for use of the America Online service is disclosed during the registration process, neither the registration screens nor the Terms of Service disclose the manner in which America Online calculates the time that consumers spend online. Consumers may, however, obtain information on this subject by accessing online resource areas, including an online explanation of America Online's billing practices. This explanation, attached hereto as Exhibit E, provides in relevant part:

Exhibit E

CONNECT RATE[:] If you use MORE time online this month than the number of free hours noted at the top of this screen [5 hours/month], you will be charged a connect rate. You will be charged for your extra [connect] time on America Online in one- minute increments. . . .

AMERICA ONLINE'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

9. Through the means described in paragraphs five through eight, America Online has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within thirty days of their initial sign-on and do not exceed ten hours of online use.

10. In truth and in fact, consumers who participate in America Online's free trial offer and use less than ten hours of online time during the thirty days following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In the advertising and sale of its online service, America Online has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within thirty days of their initial sign-on and do not exceed ten hours of online use. America Online has failed to disclose adequately to consumers that, upon completion of ten hours of online use or thirty days from the date of initial sign-on, whichever is earlier, consumers who fail to contact America Online and cancel their trial memberships are automatically enrolled as members of America Online and are charged a monthly membership fee plus applicable hourly fees. These fees continue to accrue until the consumers affirmatively cancel their memberships.

Such facts would be material to consumers in their purchase or use of the America Online service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

12. Through the means described in paragraphs five through eight, America Online has represented, expressly or by implication, that it calculates online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, for time spent online beyond the five free hours of monthly connect time. In addition, America Online rounds up portions of a minute to the next highest whole minute. Thus, America Online has represented, for example, that an online session lasting 2 minutes and 46 seconds would be billed as 3 minutes.

13. In truth and in fact, America Online does not merely calculate online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, with portions of a minute rounded up to the next whole minute. Rather, America Online adds 15 seconds of connect time to each online session, allegedly representing the time required for a user's modem to connect to America Online at the start of an online session and the time required to disconnect from America Online at the close of a session. When online usage consists of a whole minute plus 46-59 seconds, the additional 15 seconds causes the total connect time to exceed the next whole minute. Thus, for example, an online session of 2 minutes and 46 seconds, with the 15 second supplement, totals 3 minutes and 1 second and is billed as 4 minutes. Likewise, when an online session consists of a whole minute exactly, the additional 15 seconds causes the session to be rounded to the next whole minute. Therefore, the representation set forth in paragraph twelve was, and is, false or misleading.

14. In the advertising and sale of its online service, America Online has represented, expressly or by implication, that it calculates online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, for time spent online beyond the five free hours of monthly connect time. America Online has failed to disclose adequately to consumers its practice of adding 15 seconds of connect time to each online session, as described in paragraph thirteen. Such facts would be material to consumers in their purchase or use of the America Online service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

15. In the course of the online registration process, consumers view a screen titled "Billing Options," attached as Exhibit F, that states:

Exhibit F

Choose a billing method

To ensure that we have the correct billing information on file for charges incurred beyond your trial time, please select one of the following payment options:

VISA

MasterCard

American Express

DiscoverCard

Checking

Consumers choosing the Checking option are first informed that America Online will deduct automatically from their checking accounts each month any charges that they incur in using the online service. Until at least September 1995, such consumers also viewed a screen, attached as Exhibit G, that states:

Exhibit G

Processing your Checking Authorization

Thank you for trying America Online. In the next few days you will receive a checking authorization form in the mail. This form gives America Online authorization to deduct the charges you incur from your checking account automatically every month. We request that this form be returned at your earliest convenience. Until it is received, your account will be limited to \$50.00.

16. Through the means described in paragraph fifteen, America Online has represented, expressly or by implication, that it would not debit consumers' checking accounts before it received the authorization forms permitting it to do so.

17. In truth and in fact, America Online in many instances debited the checking accounts of consumers before receiving their authorization forms or without ever receiving such forms. Therefore, the representation set forth in paragraph sixteen was, and is, false or misleading.

AMERICA ONLINE'S VIOLATIONS OF SECTION 907 OF THE EFTA

18. As described in paragraph seventeen, in the course and conduct of its business, America Online in many instances has debited consumers' checking accounts before receiving their authorization forms or without ever receiving such forms. In addition, in the course and conduct of its business, America Online in many

instances has failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers.

19. America Online's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

20. The acts and practices of America Online as alleged in this complaint constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act. Such acts and practices additionally violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d).

Commissioner Azcuenaga not participating.

Complaint

125 F.T.C.

EXHIBIT A

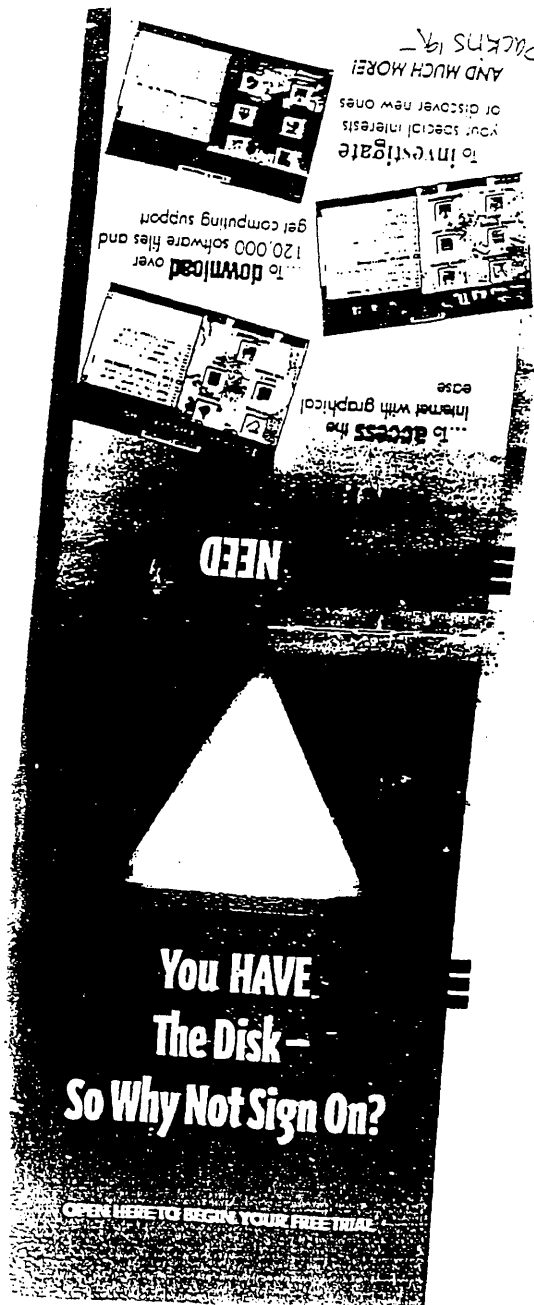


EXHIBIT A

Is Your America Online

Software Missing?

No Problem!

Call 1-800-827-6364

For A FREE Replacement.

CCC036

▼ Use this
▼ special
▼ registration
▼ number and
▼ password
▼ for your
▼ free trial.



If you're having trouble connecting
to America Online, call us toll-free at:

1-800-827-3338

Complaint

125 F.T.C.

EXHIBIT A

It Just Takes 3 Easy Steps...

STEP 1 Insert the attached disk in your disk drive and double-click on the Install icon.

STEP 2 Click Continue when prompted and click on the Install button to begin installing the America Online software.

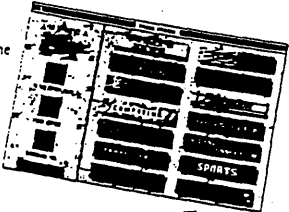
STEP 3 Once installation is complete, click on OK, open your new folder, double-click on the America Online icon, and follow the simple, step-by-step instructions on your screen. When prompted, enter the registration number and password below.

...To explore America Online® for TEN hours on us.

So, go for it and we'll see you online soon!

Are You Ready?

Are you ready to use the online service with the most intuitive interface around, because it has all the point-and-click ease of your Mac??

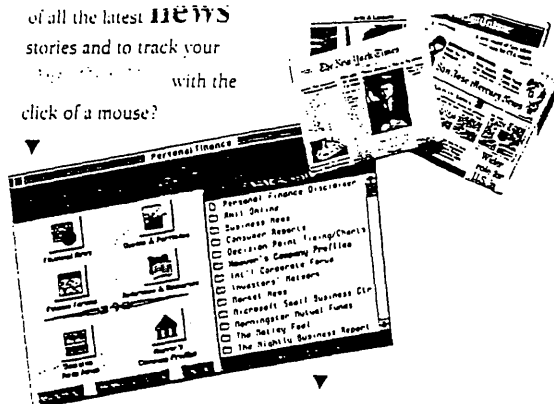




Are you ready to access text and compelling graphics online and download graphic files to view, save, and send?

EXHIBIT A

of all the latest **NEWS**
stories and to track your
favorite stories with the
click of a mouse?



Are you ready to **chat** online with thousands of members across the nation and meet recognized *personalities* from academia to Hollywood at online conferences?

**If You're Ready For All That, Then
You're Ready For America Online!**

[illegible]

Complaint

125 F.T.C.

EXHIBIT B

TRY AMERICA ONLINE FREE FOR 10 HOURS!
OPEN HERE FOR FREE SOFTWARE

SPECIAL TRIAL OFFER
10 FREE HOURS TO EXPLORE
AMERICA ONLINE FOR WINDOWS

EXCITING NEW LOOK!

TRY THE NATION'S MOST EXCITING ONLINE SERVICE — FREE

Now available on Windows 3.11 and Windows 95. All with the ease-of-use and power of Windows.

Support from our dedicated and experienced service team is available 24/7.

Easy access to all the features and services of America Online.

Explore 14 Expanded Departments:

- NEWSSTAND
- TELEVISION
- WEATHER
- SPORTS
- TRAVEL
- ENTERTAINMENT
- ARTS
- SCIENCE
- EDUCATION
- HEALTH
- ENVIRONMENT
- DICTIONARY
- REFERENCE
- TOOLBOX

Windows 3.11 and Windows 95

Explore 14 Expanded Departments

14,900 BROADBAND NOW AVAILABLE

DM-Still Use

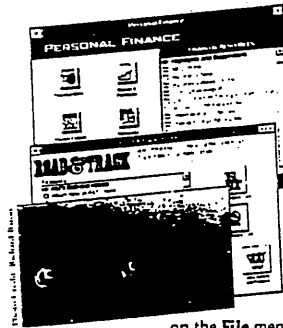
403

Complaint

EXHIBIT B

JUST USE THIS
SOFTWARE
TO TRY
AMERICA ONLINE
FREE.

Is Your AMERICA ONLINE
SOFTWARE MISSING?
NEED MAC OR DOS FORMAT?
NO PROBLEM.
CALL 1-800-827-6364
FOR A FREE REPLACEMENT.



Sign on with this disk and it's all yours — your choice of over 60,000 free software and shareware programs along with online support from more than 300 hardware and software companies. Explore hundreds of services, including live, interactive chat, TIME Magazine, Compton's searchable encyclopedia, the Windows Support Forum, live conferences and events, and much more.

Read your favorite newspaper or magazine online, and with America Online's new graphics viewer, download photographs and graphics and see them online!

Start using your 10 FREE hours today.

Just insert the enclosed disk in your disk drive, click on the **File** menu of your **Windows Program Manager**, and select **Run**. Then type A:\SETUP (or B:\SETUP) and press ENTER. Follow the easy instructions and you'll be online in minutes!

America Online is also available in DOS and Macintosh formats.

If you're having trouble connecting to America Online or need a different disk size or type, call us toll-free at 1-800-827-6364.



Complaint

125 F.T.C.

EXHIBIT C

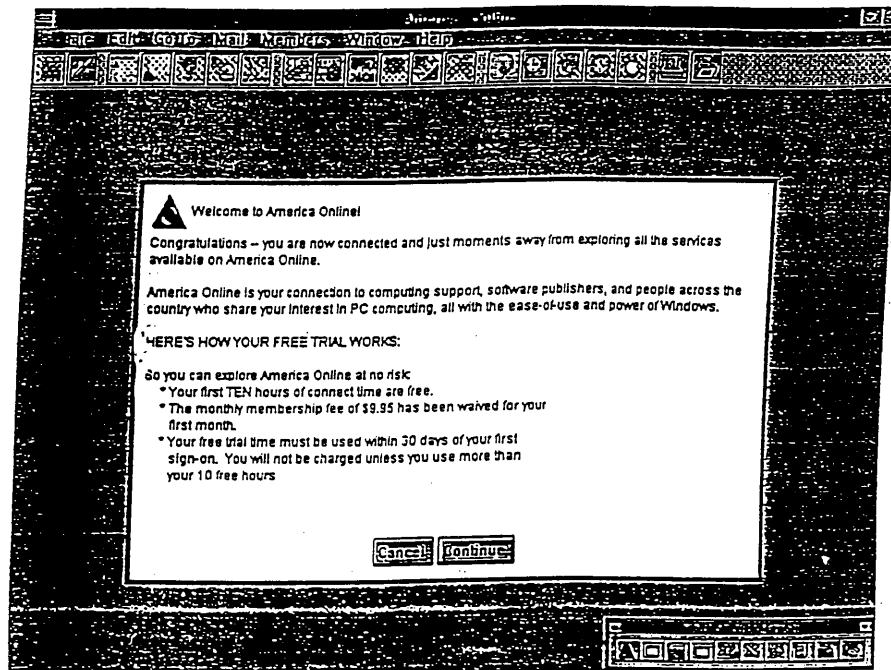
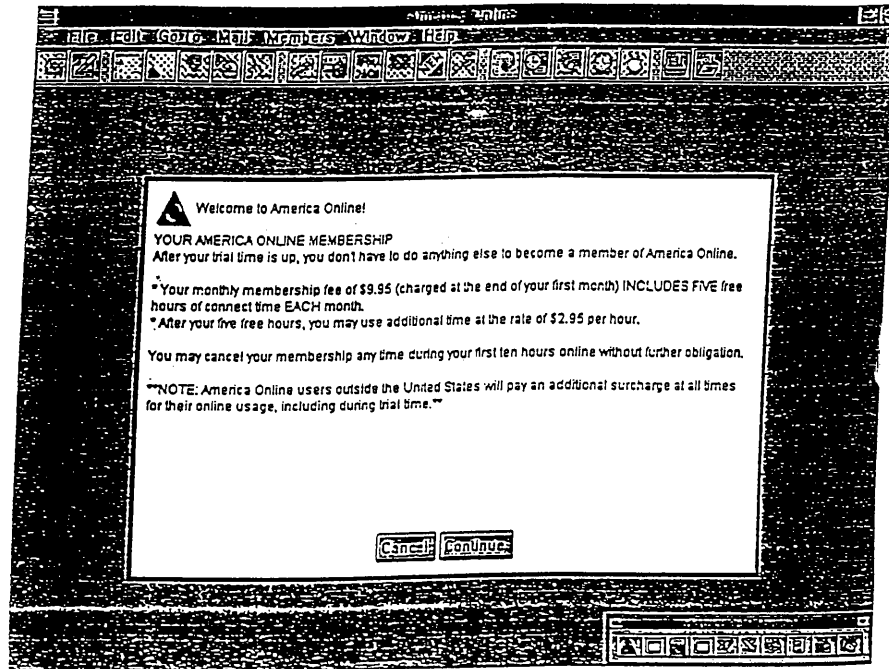


EXHIBIT D



Complaint

125 F.T.C.

EXHIBIT E

The following is an explanation of the terms described at the top of this screen:

MONTHLY FEE AS a part of your trial offer, you will pay no monthly fee the first month. At the end of your first month online (on your anniversary date, noted above as next billing date) you will be charged the fee for your second month of membership.

FREE HOURS AS part of your trial offer, you will get free time online to explore America Online. At the top of your screen, you will see the number of free hours offered during your first month. These free hours are only valid during the first thirty days of membership.

CONNECT RATE If you use MORE time online this month than the number of free hours noted at the top of this screen, you will be charged a connect rate. You will be charged for your extra time on America Online in one-minute increments. If you live outside the continental United States, you will be assessed a 20 cent per minute telecommunications surcharge. This surcharge will apply any time you are online.

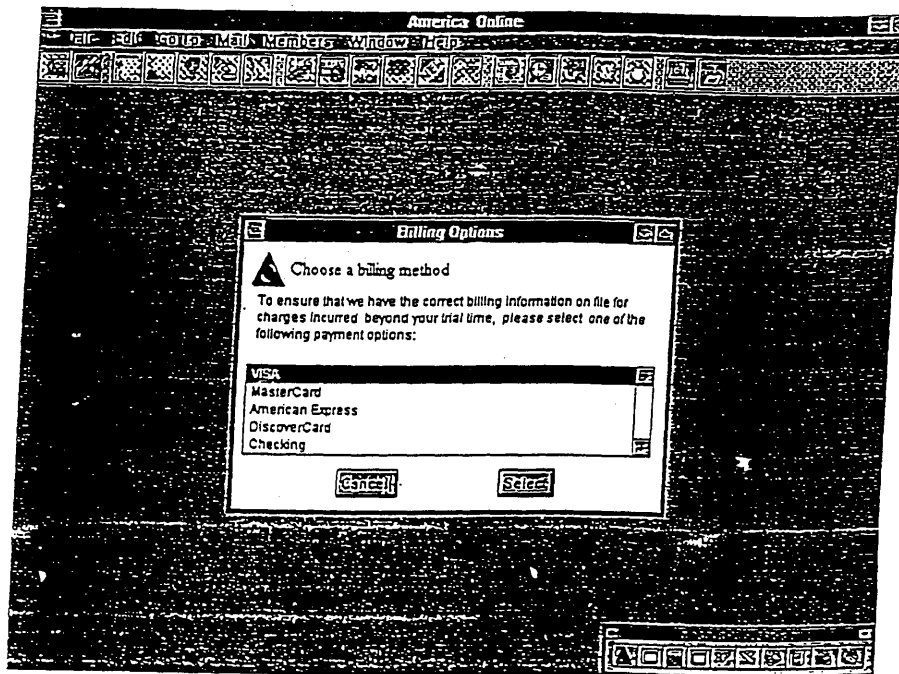
DAYTIME SURCHARGE Surcharges apply only if noted above, from 6am. to 6pm. Monday through Friday.

NEXT BILLING DATE On the date noted above, two things will happen: You will be charged your monthly fee for your second month as an America Online member AND you will be granted more free time to use America Online during that month.

403

Complaint

EXHIBIT F

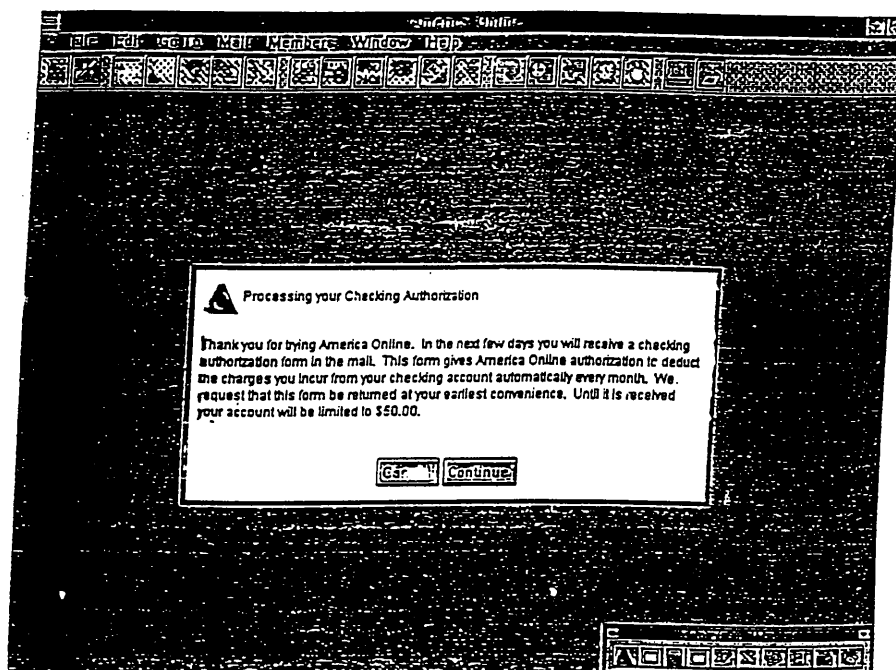


1-800-777-7777
601.011

Complaint

125 F.T.C.

EXHIBIT G



000817

8-11-71

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and the Electronic Fund Transfer Act and its implementing Regulation E; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent America Online, Inc. is a Delaware corporation, with its principal office or place of business at 22000 AOL Way, Dulles, VA.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "*Account*" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution, as defined below, and established primarily for personal, family, or household purposes.

2. "*Financial institution*" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

3. "*Consumer*" means a natural person or other entity which may be billed for online services; provided that, for purposes of paragraphs V, VI, and VIII(A) of this order, "consumer" shall only mean a natural person.

4. "Electronic Fund Transfer," as defined by the Electronic Fund Transfer Act, 15 U.S.C. 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.

5. "Online Service" shall mean a respondent-controlled access, information, communication, or transaction service which is made available to consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.

6. Unless otherwise specified, "*respondent*" shall mean America Online, Inc., its successors and assigns, and its officers, agents, servants, divisions, and employees.

7. "*Respondent-controlled*" shall mean respondent makes the management decisions affecting compliance with the provisions of this order.

8. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or

distribution of any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

II.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered "free," "without risk," "without charge," "without further obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in respondent's detailed instructional materials (e.g., starter kits, guidebooks) distributed to consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this paragraph II, "clearly and prominently" shall mean, as to any representation described above in this paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in paragraph IV below), or print media (including promotion packages attached thereto), a statement directing consumers to a location where the disclosure required herein will be available (e.g., "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a

type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

III.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the fees or charges assessed for such Online Service.

IV.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the consumer incurring any financial obligation or liability to respondent, the terms of all mandatory financial obligations to respondent which will be incurred by the consumer as a result of using such Online Service, including but not limited to the following:

A. The financial terms and conditions of any plan or practice (e.g., trial offer) by which consumers enroll in or renew enrollment in such Online Service and by which, accordingly, respondent charges the consumer; provided, that if such plan or practice exists, respondent must also disclose clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service and provide at least one reasonable means by which the consumer may effectively cancel his or her enrollment by a date certain and thereby avoid further charges;

B. Any mandatory membership, enrollment, or usage fees (e.g., monthly or hourly usage charges); and

C. The manner in which such fees or charges are assessed and calculated, provided, that respondent may satisfy this provision by disclosing that: (i) additional charges might apply; (ii) information about assessing and calculating the consumer's fees or charges can be

found online; and (iii) the exact location, such as the particular area online (e.g., Keyword: Billing), where consumers can find detailed information about assessing and calculating the consumer's fees or charges.

Provided, however, that for purposes of this paragraph IV, a disclosure is "clearly and prominently" made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In addition to the foregoing, such disclosure shall not be avoidable by consumers. Provided, further, that such disclosure shall not be deemed avoidable for purposes of this order based solely on an ordinary consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

V.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not misrepresent the terms or conditions of such Electronic Fund Transfer.

VI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not:

A. Fail to obtain consumer authorization before initiating any Electronic Fund Transfer from any consumer account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a), and Section 205.10(b) of Regulation E, 12 CFR 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

B. Fail to provide any consumer with advance notice of Electronic Fund Transfers from the consumer's account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(b), and Section 205.10(d) of Regulation E, 12 CFR 205.10(d), as more fully set out in Section

205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

VII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by paragraphs I - V of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in paragraph VIII of this order, including, but not limited to:

A. All advertisements, promotional materials, and instructional materials distributed or accessible to consumers containing the representation;

B. For five (5) years after the date of receipt or generation, all written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VIII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All documents pertaining to respondent's use of Electronic Fund Transfers from consumer accounts, including written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, in lieu of maintaining all electronic mail communications, respondent may comply with this provision by maintaining a representative sample of such communications; and

B. All business records which demonstrate respondent's compliance with paragraph VI of this order; provided, however, in lieu of maintaining all electronic mail communications, respondent

may comply with this provision by maintaining a representative sample of such communications.

IX.

It is further ordered, That respondent, and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (*e.g.*, vice-presidents or above), and agents (including, without limitation, advertising agencies) having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns, shall prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

X.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or respondent-controlled subsidiary or respondent-controlled affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, within sixty (60) days after the date of service of this order, and at

such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

XII.

It is further ordered, That, no later than six (6) months from the effective date of this order, respondent shall establish and implement a program to educate consumers about consumer use of electronic payment systems. Such program:

A. May be established jointly with, or under the auspices of, an appropriate trade association or other consumer education program (e.g., Project Open);

B. Shall have a duration of not less than one (1) year from the date of implementation;

C. Shall be of a scope and employ media reasonably necessary to reach a wide audience of consumers, including but not limited to:

1. At least 50,000 color brochures designed, produced, printed, and disseminated by respondent directly to consumers and organizations with direct access to consumers likely to use electronic payments systems;

2. The Internet;

3. Reference on respondent's Online Service; and

4. A direct link to the Internet from respondent's Online Service; and

D. Shall include, but not be limited to, information about: various types of electronic payment systems available to consumers; obligations of consumers, merchants, and financial institutions in using such systems; how such payment systems are used, including the means by which consumers may attempt to prevent the fraudulent use of those systems; various legal protections available to consumers under each system; and organizations, including law enforcement agencies, from which consumers may obtain further information or assistance.

No later than ninety (90) days from the date of issuance of this order, respondent shall submit for review and approval to the Associate Director, Division of Credit Practices, a draft plan for the program and drafts of any materials to be disseminated pursuant to paragraph

XII(C) above. Such approval shall not be unreasonably withheld. Such description and materials should be sent by overnight delivery to the Associate Director, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

This order will terminate on March 16, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Commissioner Azcuenaga not participating.

Complaint

125 F.T.C.

IN THE MATTER OF

PRODIGY SERVICES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3788. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the New York-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang and Steven Silverman.*

For the respondent: *Richard Kurnit, Frankfurt, Garbus, Klein & Salz, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Prodigy Services Company, a general partnership, which has been succeeded by Prodigy Services Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Prodigy Services Company was a New York general partnership comprised of two equal partners: International Business Machines Corporation and Sears, Roebuck and Company. Prodigy Services Corporation, a Delaware corporation with its principal office or place of business at 445 Hamilton Avenue, White Plains, New York, is a successor corporation to Prodigy Services Company, a general partnership. Prodigy Services Company, a general